Fact Sheet

Storm Water Discharges from Construction Activities
North Dakota Pollutant Discharge Elimination System (NDPDES)
General Permit NDR10-0000

Reissuance

Background

The general permit will replace NDPDES General Permit NDR03-0000 which is scheduled to expire on September 30, 2004. The change in permit number to **NDR10-0000** for the renewal has been made at the request of EPA. The reissued permit will continue to cover storm water discharges from both large construction activity and small construction activity as was provided for by the expiring version of the permit.

The expiring permit (NDR03-0000) was issued on October 1, 1999, for storm water discharge from construction activity as outlined in the EPA's Storm Water "Phase I" Final Rule published on November 16, 1990 (55 FR47990). In March 2003, the permit was modified in response to the EPA's Storm Water "Phase II" Final Rule published on December 8, 1999 (64 FR68722). The "Phase II" rule established permit requirements to regulate storm water discharges from small construction activity. The Department, as the delegated permitting authority, modified the general permit for construction storm water discharges to add conditions for storm water discharges from **small** construction activity.

General permits provide a streamline means to cover a large number of facilities that are subject to the regulations storm water discharges from construction activities. In addition, the general permit process places less of an administrative burden on the issuing authority and regulated community than the individual permitting process. The general permits require baseline control practices aimed at minimizing the impact of storm water discharges on waters of the state. Individual permits or limited applicability permits (i.e. watershed specific or road construction) may be developed to address specific water quality concerns or specific industry segment practices.

Currently, there are approximately 490 construction projects or operations covered by the existing permit for storm water from construction activities. Of that number, approximately 370 are for large construction activities and approximately 120 are for small construction operators/owners. Under the provisions for small construction, multiple construction small construction projects may be operated by a permittee who obtains coverage specifically for small construction. Over the next five years the number of covered by the permit is expected to increase slightly. The increase in permit numbers is expected as result of increased awareness of the "Phase II" obligations for small construction and the development of related construction storm water programs by small MS4s regulated by the "Phase II" rule.

Discharges Covered

This permit applies to storm water discharges associated with large construction activity and with small construction activity as defined in 40 C.F.R. part 122.26(b)(14)(x) and (b)(15), respectively.

1. Large construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.

2. Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility, as defined in 40 C.F.R. part 122.26(b)(15).

Storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) may be covered by this permit as part of a related construction site. Similar facilities that will serve multiple projects or commercial in nature must be covered by a different permit. In many cases it will be appropriate for construction support facilities to be covered under general permit NDR32-0000; storm water discharges from mining, extraction or paving material preparation activities.

There are other types of discharges which also may not be appropriately regulated through this permit and other limitations on what activities this permit can authorize. As such, the following discharges are not eligible for coverage under this permit:

1. Storm water discharges associated with industrial activity from any source other than construction activities and related support facilities.

2. Post-construction discharges from industrial activity that originate from the site after construction activities have been completed and final stabilization at the site is achieved. Industrial and post-construction storm water discharges may need to be covered by a separate storm water permit.

3. The placement of fill into waters of the state requiring local, state, or federal authorizations (such as U.S. Army Corps of Engineers Section 404 permits).

4. This permit does not substitute for obligations under the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or National Historic Preservation Act (NHPA), it is your responsibility to ensure the project and resulting discharges comply with the respective requirements.

5. Storm water discharges that the Department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards.

6. Discharges to waters for which there is a total maximum daily load (TMDL) allocation for sediment and/or parameters associated with sediment transport are not covered unless you develop a SWPP plan that is consistent with the assumptions, allocations and requirements in the approved TMDL. If a specific numeric wasteload allocation has been established that would apply to the project's discharges, the permittee(s) must incorporate that allocation into its SWPP plan and implement necessary steps to meet that allocation.

Obtaining Coverage

Facilities covered under the present permit shall be retained, provided renewal request is made by submitting the renewal form(s) provided by the Department or other written request for renewal under the provisions for Continuation of Coverage in the present permit. If deemed necessary, the Department may require the submittal of a new Notice of Intent.

For operators of new construction activities wishing to obtain coverage, an application must be submitted at least 7 days prior to starting any activity subject to regulation as a storm water discharge associated with industrial activity. Permit coverage will become effective 7 days after submittal of a complete application unless otherwise notified by the Department (based on the earlier of postmarked date or department date-stamp).

The application requirements for general permits have in the past, and may be more appropriately referred to under NPDES permit regulations, as a Notice of Intent (NOI) to obtain coverage. However, to simplify permit language the Department will use the term “application” in place of “Notice of Intent” in reference to the process of obtaining coverage under the general permit. The application may be on a form provided by the Department or other form containing the required information. The current NOI form will be acceptable. New forms may be made available in the future to better reflect the application requirements or to coordinate the process with small MS4 construction programs.

The application requirements for coverage under the general permit are different for large and small construction activity. The application requirements for the two classes of construction storm water discharges are outlined separately in the following sections.

Large Construction Activity Coverage

A separate application must be submitted for each project meeting the definition of large construction activity. The owner or the owner jointly with the operator (usually the general contractor) shall submit a completed application for this permit. The owner is responsible for compliance with all terms and conditions of this permit. The operator has day to day supervision of construction activities is jointly responsible with the owner for compliance with the permit for construction activities performed.

The application for large construction activity shall contain, at a minimum, the following information:

1. Owner name, mailing address and phone number;
2. Project contact name and phone number
3. Project/site name;
4. Project/site location (street address; section, township, range; or latitude and longitude), county;

5. A brief description of the construction activity;
6. The anticipated starting date and the anticipated completion date for the project;
7. The estimated total area of disturbance in acres;
8. Name of receiving water(s) or the name of the municipal storm sewer system and receiving water(s);
9. List of contractors/subcontractors working at the site (if known)
10. The signature of the applicant(s), owner (and operator if co-applicants) signed in accordance with NDPDES permit signatory requirements.

A copy of the storm water pollution prevention plan must be available for review by the Department at the time of application. A copy of the Storm Water Pollution Prevention (SWPP) plan must be submitted with the application if the project involves 50 or more acres; or the project will have a discharge point located with 2000 ft of, and flow to, a water body listed as impaired under section 303(d) of the Federal CWA due to sediment or parameters associated with sediment transport. A copy of the 303(d) List will be maintained on the Department's web site.

Small Construction Activity Coverage

An operator must submit a single application to the Department to obtain coverage for storm water discharges from all of their small construction sites. An operator is the individual who has day to day supervision and control of activities occurring at the construction sites. This can be the owner, developer, the general contractor or, in some circumstances, the agent of one of these parties.

The single application process for small construction activity was deemed appropriate by the Department to efficiently manage the large number site locations subject to the phase II requirements. The phase II rule added 40CFR122.28 (b)(2)(v) which provides the permit authority the discretion to authorize discharges from small construction activity under a general permit without the submittal of a NOI. The single application process is a limited implementation of the rule provision. While the change to 40CFR122.28 would allow for a permit to apply without a NOI, this permit requires an initial application by operators to obtain coverage. Once coverage is obtained the operator is, in essence, registered or licensed to operate storm water discharges from all of their small construction activity in accordance with the conditions of this permit. The initial application allows the Department to track small activity and maintain contact with the operators of small construction activity in the state.

In the Department's judgment the single application process for small construction is advantageous to a process requiring a NOI for each individual project subject to regulation as small construction activity. The process allows the Department to focus limited resources on an industry segment as a whole in response to water quality issues. Given the small size and short duration of small construction activities there is a low potential for an individual project to result in significant water quality impact. It is more likely that the collective impact (or benefit) of the practices used by operators routinely on their projects will have significance. Thus, the Department decided to consolidate the permitting process for small construction activity.

The application for small construction activity shall contain, at a minimum, the following information:

1. Name and mailing address of the owner or operator;
2. Contact name and phone number;

3. A brief description of the construction activity type;
4. The signature of the applicant(s), signed in accordance with NDPDES permit signatory requirements.

The application for small construction activity shall be submitted to the Department prior to the start of construction. The operator is responsible for implementing a storm water pollution prevention plan for all their small construction sites. The Department may request a copy of the SWPP plan(s) for an operator's small construction sites.

Operators of small construction activity shall maintain an up to date record of site locations they operate. Operators are also required to submit an Annual Location Record to the Department by January 31 of each year.

Notice of Termination (NOT)

Permittees wishing to terminate coverage under this permit the must submit a Notice of Termination (NOT) or other written request identifying the facility, reason why the permit is no longer needed. The NOT must be signed in accordance with the standard NDPDES permit signatory requirements. Compliance with the conditions of this permit is required until a NOT is submitted.

Typically, permittees may only submit a NOT after final stabilization (see definitions in permit) has been achieved on all portions of the site for which the permittee is responsible. In some cases a NOT may be appropriate when another operator/permittee has assumed control over all areas of the site that has not been finally stabilized in accordance transfer provisions of the permit. For residential construction only, the Department will accept NOTs when temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. In such cases, the permittee must distribute a "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization.

Operators of small construction activity are not required to submit NOTs for their individual small construction sites, however, final stabilization is required on all sites. If an operator ceases all of its small construction activity and has submits annual Location Records that certify final stabilization has been completed on all its small construction sites, an NOT must be submitted to end permit coverage for small construction activity.

Transfer of Ownership or Control

When the owner or operator of a construction project changes the new owner operator must submit a written request for permit transfer/modification within 7 days of assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property. Late submittals will not be rejected; however, the department reserves the right to take enforcement for any unpermitted discharges or permit noncompliance. For storm water discharges from construction activities where the owner or operator changes, the new owner or operator can implement the original SWPP plan created for the project or develop and implement their own SWPP plan. Permittee(s) shall ensure either directly or through coordination with other operators that their SWPPP meets all terms and conditions of this permit and that their activities do not interfere with another party's erosion and sediment control practices.

For the transfer of properties in a development (e.g., an original developer sells portions of the property to various homebuilders) the new owner(s) must obtain permit coverage for the property by one of the following methods:

1. If the new owner or operator has existing permit coverage for small construction, the new operator can begin activities on individual lots or tracts of less then 5 acres under the provisions for small construction. The new operator is responsible for complying with the permit conditions and entering the site on location record within 7 days of the transfer.

2. If the new owner does not have applicable permit coverage or the tract consists of 5 or more acres, a new application must be filed by the new owner or operator within 7 days of the transfer.

Qualifying Local Programs

The phase II storm water rule provides for the recognition and incorporation by reference of qualifying local programs for erosion and sediment control from construction sites (40CFR122.44(s)). Presently, the Department has not recognized any qualifying local programs that would substitute for all or part of construction storm water permit requirement. The development of qualifying local programs is not anticipated during the term of this permit. However, if such programs were to be developed substantially before the permit expiration date the Department may modify this permit to incorporate applicable conditions.

The permit does contain conditions that may be used to coordinate the requirements of this permit with local programs. The permit provides for the use of applications forms other than ones provided by the state so as long as they contain the information specified in the permit. The permit also provides for any applicable portions of plans developed under other regulatory programs to be incorporated into the SWPP plan required by this permit.

Storm Water Pollution Prevention Plans

All facilities covered by this general permit are required to prepare, implement, and maintain a Storm Water Pollution Prevention (SWPP) plan. The SWPP plan and revisions are subject to review by the Department. The objectives of the plan are to identify potential sources of sediment or other pollution from construction activity and to ensure practices are used to reduce contribution of pollutants from construction site runoff. Storm water management measures developed under other regulatory programs can be included in the SWPP plan or incorporated by reference. The SWPP plan must also incorporate the design maintenance guidelines included in the permit as Appendix 1, to the extent practicable. The SWPP plan shall include the following information.

1. **Site Description**. Each plan shall provide a description of the construction site and potential pollutant sources as indicated below:

    a. A description of the overall project and the type of construction activity;

    b. Estimates of the total area of the site and the total area that is expected to be disturbed by excavation, grading, grubbing, or other activities during the life of the project;

c. A proposed timetable of activities that disturb soils for major portions of the site;

d. A description of the soil within the disturbed area(s);

e. The name of the surface water(s) or municipal storm sewer systems at or near the disturbed area that may receive discharges from the project site; and

f. A site map indicating:
   (1) drainage patterns and approximate slopes anticipated after major grading activities;
   (2) construction site boundaries and areas of soil disturbance;
   (3) location of major structural and nonstructural controls identified in the plan;
   (4) location of areas where stabilization practices are expected to occur;
   (5) surface waters, including an aerial extent of wetland acreage; and
   (6) locations where storm water is discharged to surface water.

2. **Operational Controls.** The plan shall describe the Best Management Practices (BMPs) used in day to day operations on the project site that reduce the contribution of pollutants in storm water runoff.

   a. Good housekeeping practices to maintain a clean and orderly facility. Litter, debris, chemicals and parts must be handled properly to minimize the exposure to storm water. This includes measures to reduce and clean up vehicle tracking of sediment off-site and generation of dust.

   b. Preventive maintenance practices must be followed. Routine inspections and maintenance are necessary to ensure the proper operation of storm water management devices (oil water separators, catch basins, and silt fences) as well as equipment used at a site.

   c. Spill prevention and response procedures must developed where potential spills can occur. Where appropriate, specific handling procedures, storage requirements, spill containment and cleanup procedures shall be identified.

   d. Employee training informs personnel of their responsibility in implementing the practices and controls included in the plan such as spill response, good housekeeping, and sediment control practices.

3. **Erosion and Sediment Controls**. An erosion and sediment control plan shall be developed to identify the appropriate control measures and when they will be implemented during the project for each major phase of site activity. The erosion and sediment control plan must conform to the guidelines provided in Appendix 1 of the permit which represents a compilation of regionally applied design and operating standards. The basic elements for erosion and sediment controls are indicated below:

   a. Sediment basins, or an appropriate combination of equivalent sediment controls such as smaller sediment basins, and/or sediment traps, silt fences, fiber logs, vegetative buffer strips, berms, etc., are required for all down slope boundaries of the disturbance area and for those side slope boundaries as may be appropriate for site conditions.

b. Temporary erosion protection (such as cover crop planting or mulching) or permanent cover must be provided for the exposed soil areas where activities have been completed or temporarily ceased. These areas include graded slopes, pond embankments, ditches, berms and soil stockpiles.

c. All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

d. If sediment escapes from the site, off-site accumulations of sediment must be removed in a manner and at a frequency sufficient to minimize off-site impacts. The plan must be modified to prevent further sediment deposition off-site.

4. **Storm Water Management**. The plan shall include a description of practices that will be installed during the construction process to control pollutants in storm water discharges occurring after construction operations have been completed. Such practices may include:

   a. Storm water ponds; flow reduction by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems which combine several practices. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

   b. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to minimize erosion and protect the receiving water. Under this permit, permittees are responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site and until the submittal of a NOT. However, post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate permit.

5. **Maintenance.** All erosion and sediment control measures and other protective measures identified in the plan must be maintained in effective operating condition. The plan must indicate as appropriate the maintenance or clean out interval for sediment controls. If site inspections, required in this permit, identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.

6. **Inspections**. The plan must provide for site inspections to monitor the condition of storm water discharge outlets and effectiveness of BMPs. The permittee shall ensure that personnel conducting site inspections are familiar with permit conditions and the proper installation and operation of control measures. Site inspections on active sites shall be conducted least once every 14 calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24-hour period. Reduced inspection frequencies are provided for inactive sites and during adverse weather. The permit also specifies the minimum information that must be recorded for each inspection.

7. **Plan Review and Revisions**. The plan shall be signed in accordance with the permit's signatory requirements, and retained on-site for the duration of activity at the permitted

location. The permittee shall make plans available upon request to the Department, EPA, or, in the case of discharges to a municipal separate storm sewer system, to the operator of the municipal system. The permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in storm water.

Additional Terms and Conditions for Storm Water Discharges

1. If any measurable quantity of sediment leaves the site because of structural failure or lack of design capacity of the BMPs, the sediment shall be placed back on the site or properly disposed of, as soon as condition allow. Under no conditions shall the sediment be washed into the storm sewers or drainage ways.

2. Concrete wash water shall not be discharged to waters of the state, storm sewer systems or allowed to drain onto adjacent properties.

3. Bulk storage structures for petroleum products and other chemicals shall have adequate leak and spill protection to prevent any spilled materials from entering waters of the state.

4. The storm water controls are expected to withstand and function properly during precipitation events of up to the 2 year, 24 hour storm event. Visible or measurable erosion which leaves the construction site from such storm events should be minimal.

5. Dewatering or basin draining (e.g., pumped discharges, trench/ditch cuts for drainage) related to the permitted activity must be managed with the appropriate BMPs, such that the discharge does not adversely affect the receiving water or downstream landowners. The Permittee(s) must operate the discharge to minimize the release of sediment and provide energy dissipation measures to adequately protect the outlet from erosion. The dewatering is limited to storm water and small amounts of ground water that may collect on a site. A separate permit must be obtained for the release of water from other sources.

6. All storm water discharges must comply with the requirements, policies, or guidelines, of municipalities and other local agencies. Any discharges of storm water to storm drainage systems or other water courses under their jurisdiction, including applicable requirements in municipal storm water management programs developed to comply with NDPDES permits, must comply with their local requirements.

Final Stabilization

The Permittee(s) must ensure final stabilization of the site. The Permittee(s) should submit a NOT within 30 days after final stabilization is complete, or another owner/operator (Permittee) has assumed control over all areas of the site that have not undergone final stabilization. Final stabilization can be achieved in one of the following ways:

1. All soil disturbing activities at the site have been completed and all soils must be stabilized by a uniform perennial vegetative cover with a density of 70 percent over the entire pervious surface area, or other equivalent means necessary to prevent soil failure

under erosive conditions and; all drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to preclude erosion; all temporary synthetic, and structural erosion prevention and sediment control BMPs (such as silt fence) must be removed as part of the site final stabilization; and the Permittee(s) must clean out all sediment from conveyances and from temporary sedimentation basins that are to be used as permanent water quality management basins. Sediment must be stabilized to prevent it from being washed back into the basin, conveyances or drainageways discharging off-site or to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

2. For residential construction only, final stabilization has been achieved when temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the Permittee must distribute a "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization.

Annual Location Record - (Small Construction Activity only)

Operators of Small Construction Activity shall maintain a Location Record that shows the locations they operated small construction activity. The Location Record shall contain the following:

1. Permit number
2. Name and mailing address of the owner or operator
3. Name of each small construction site
4. Location of each site (street address, latitude and longitude, or legal land description of township, range, section, and 1/4 section)
5. Start date of each site
6. The estimated area of total disturbance, in acres, of each site
7. Status of each site (in progress, grading complete, final stabilization date)

A copy of the Annual Location Record shall be submitted to the Department by January 31 of each year, covering the small construction sites operated during the preceding calendar year (January 1 through December 31).

Consideration of Erosivity Waivers

According to the Phase II Final Rule, the permitting authority could waive the requirements for a permit for time periods when the rainfall-erosivity factor ("R" in RUSLE equation) is less than five during the period of construction, or if the site owner or operator demonstrates that storm water controls are not necessary for sediment and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. After considering issues surrounding the waivers, the Department has chosen not to consider waivers for this permit.

After calculating the rainfall-erosivity factors for North Dakota, there appear to be very short time periods for completion and final stabilization of small construction activity. These time periods occur in the early spring when weather can vary extensively. The Department expects that the high variation in weather will delay construction site stabilization at times and will require owners or operators to obtain permits regardless.

The Department has not established TMDLs for sediment related parameters for most North Dakota water bodies. In the absence of such TMDLs, it appears the rule would require the owner or operator of a construction site to perform a TMDL or TMDL equivalent analysis to determine that sediment coming from the construction site would not impair the water body that will receive the storm water discharges from the site. It is expected that these analyses would be more costly for an owner or operator than obtaining a permit and providing erosion control for small construction activity.

Expiration Date

The proposed expiration date for this permit is September, 30, 2009. In the event that this permit is not finalized until a substantial time beyond the expiration of NDR03-0000 (September 30, 2004), the expiration may be adjusted to a date of approximately, but not to exceed, five years from the date of issuance.

Public Notification

The Department proposes to publish a 30-day notice of the proposed renewal of this general permit in the Bismarck Tribune, the official newspaper of the capital city and in the newspapers of several other larger cities located regionally throughout the state. The notice will also be mailed to the Department's Public Notice mailing list. Should there be adequate interest, a public hearing will be scheduled

RK
9/3/2004